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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RENE GERARDO MEJIA,

Defendant and Appellant.

E045947

(Super.Ct.No. RIF135555)

OPINION

APPEAL from the Superior Court of Riverside County. Jean P. Leonard, Judge.
Affirmed.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

On April 16, 2007, the Riverside County District Attorney filed an amended felony complaint charging defendant and appellant, Rene Gerardo Mejia, with assault with a deadly weapon under Penal Code section 245, subdivision (a)(1)¹ (count 1); willful infliction of corporal injury upon a spouse/cohabitant under section 273.5, subdivision (a) (count 2); and making criminal threats under section 422 (count 3). With regard to count 1, the information alleged that defendant used a deadly weapon other than a firearm, to wit, a knife, within the meaning of sections 667 and 1192.7, subdivision (c)(31). With regard to count 2, the information alleged that defendant used a deadly and dangerous weapon, to wit, a knife, within the meaning of sections 12022, subdivision (b)(1) and 1192.7, subdivision (c)(23).

On August 24, 2007, defendant pled guilty to count 2 and admitted the armed allegation, with a stipulated three-year sentence. All remaining counts and allegations were dismissed. Thereafter, on December 12, 2007, defendant filed a motion to withdraw his guilty plea. The trial court denied defendant's motion on May 7, 2008.

On June 4, 2008, the court sentenced defendant to state prison for three years, as agreed upon by the parties under the terms of the negotiated plea agreement.

On appeal, defendant contends that the trial court erred in denying his motion to withdraw his guilty plea. For the reasons set forth below, we shall affirm the judgment.

¹ All statutory references are to the Penal Code unless otherwise specified.

I

STATEMENT OF FACTS

Approximately four months after the filing of the amended felony complaint, defendant entered his guilty plea. Defendant admitted as the factual basis for his plea, the allegations in Riverside County Sheriff's report No. E07066085. The report was not made part of the record. There was no preliminary hearing or probation report, and there is nothing in the record to indicate the specific facts in the underlying information. However, because the issue raised by defendant does not require consideration of the facts of defendant's underlying offense, no facts are provided.

II

DISCUSSION

The Trial Court Properly Denied Defendant's Motion to Withdraw His Guilty Plea

Defendant's sole contention on appeal is that the trial court erred in denying his motion to withdraw his guilty plea. We disagree.

A. Background

On August 24, 2007, defendant initialed and signed a felony plea form admitting that he inflicted corporal injury on a cohabitant. Defendant's initials acknowledged that he was advised of his constitutional rights and the consequences of his plea. Defendant also indicated that he had adequate time to discuss with his attorney his constitutional rights, the consequences of his plea, and any defenses he had against the charge. At the

hearing, when he entered the guilty plea, the court inquired whether defendant read the plea agreement, understood his constitutional rights, and understood that he was voluntarily giving up those rights. Defendant answered in the affirmative. Therefore, the court found that defendant knowingly, intelligently, and voluntarily entered his guilty plea. The plea agreement required defendant to plead guilty to willfully inflicting corporal injury upon a spouse/cohabitant under section 273.5, subdivision (a) (count 2), and admit the armed allegation. Counts 1 and 3 were dismissed, and it was stipulated that defendant would be sentenced to a three-year term.

On September 7, 2007, defendant requested to withdraw the plea. On December 12, 2007, defendant filed a formal motion to withdraw his plea; he claimed ineffective assistance of counsel (IAC), alleging that his counsel failed to interview an exculpatory witness. The prosecutor filed an opposition on January 14, 2008, and a supplemental opposition on April 1, 2008.

On May 7, 2008, the trial court held a hearing on the motion. The court indicated that it had reviewed defendant's motion, as well as the opposition to the motion and the supplemental opposition. The court also read and considered the transcript of the proceedings on August 24, 2007, when defendant entered his plea. The trial court recalled the discussion it had with defendant, defense counsel, and the prosecution at the time defendant entered his guilty plea. The trial court also admitted into evidence a declaration by defendant's former attorney, Shawn Monroe. Attorney Monroe declared that "[a]t no time during the course of representation of [defendant] was counsel

informed of a potential exculpatory witness, nor was counsel provided the name, location, or any other contact information for such, from defendant or any other person associated with the case.”

In support of his motion to withdraw the guilty plea, defendant presented a 14-year-old witness, M.B. M.B. testified that in March 2007, she was living at the same address as defendant, the victim, the victim and defendant’s child, M.B.’s mother, M.B.’s aunt, and the aunt’s two children. M.B. testified that she saw no injuries on the victim’s legs on March 7, 2007, or the following day. M.B. also indicated that she had not heard any fighting or any kind of argument on March 7, 2007.

During cross-examination, M.B. admitted that defendant was “like my brother.” She also conceded that she did not ask the victim if she had received any injuries. When asked by the prosecutor whether M.B. stared at the victim’s legs to see if there were any injuries, M.B. stated that she did not. Finally, M.B. testified that she was 13 years old at the time of the incident, and that there were other adults present in the residence that night.

The trial court denied defendant’s motion, finding that the plea was entered into knowingly, voluntarily, and intelligently. The court also found that defendant’s counsel was competent and professionally handled the case. Furthermore, the court questioned M.B.’s credibility, stating that “[t]here were other adults in the home, and yet none of them were brought forward as any sort of exculpatory witness, which I have to question.”

The court stated M.B. was biased and the “weight that would be given to her testimony would be minimal or none.”

B. Standard of Review

“Penal Code section 1018 provides that a trial court ‘must’ allow the withdrawal of a guilty plea only in the case of a defendant who entered a guilty plea without counsel, and in other cases the court ‘may . . . for good cause shown, permit a plea of guilty to be withdrawn’” (*People v. Watts* (1977) 67 Cal.App.3d 173, 184; see *People v. Cruz* (1974) 12 Cal.3d 562, 566.) Good cause is shown by mistake, ignorance, inadvertence, or “any other factor overreaching defendant’s free and clear judgment,” and the defendant has the burden of showing good cause by clear and convincing evidence. (*People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 797; *People v. Cruz, supra*, at p. 566.) The trial court then considers all factors necessary to obtain a just result, including the rights of the defendant. (*People v. Superior Court (Giron), supra*, at p. 798; *People v. Waters* (1975) 52 Cal App.3d 323, 331.) The trial court must examine whether the defendant understood the nature of the charges, the elements of the offense, the pleas, and the defenses at the time of his plea. (*People v. Hunt* (1985) 174 Cal.App.3d 95, 103.)

“A decision to deny a motion to withdraw a guilty plea “rests in the sound discretion of the trial court” and is final unless the defendant can show a clear abuse of that discretion.” (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.) The trial court has broad discretion when considering a motion to withdraw a guilty plea, and the facts found by the trial court must be adopted by the reviewing court if they are supported by

substantial evidence. (*People v. Suon* (1999) 76 Cal.App.4th 1, 4; *People v. Mickens* (1995) 38 Cal.App.4th 1557, 1561.) Therefore, the trial court’s denial must be “arbitrary or capricious or ““exceed[] the bounds of reason . . . ””” to be disturbed on appeal.² (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

C. Analysis

1. Ineffective Assistance of Counsel

Defendant claims that the trial court erred in denying his motion to withdraw his guilty plea because his trial counsel rendered IAC.

In order to establish a claim of IAC, defendant must demonstrate, “(1) counsel’s performance was deficient in that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel’s deficient representation prejudiced the defendant, i.e., there is a ‘reasonable probability’ that, but for counsel’s failings, defendant would have obtained a more favorable result. [Citations.] A ‘reasonable probability’ is one that is enough to undermine confidence in the outcome. [Citations.]” (*People v. Dennis* (1998) 17 Cal.4th 468, 540-541, citing, among other cases, *Strickland v. Washington* (1984) 466 U.S. 668 [80 L.Ed.2d 674, 104 S.Ct. 2052]; accord, *People v. Boyette* (2002) 29 Cal.4th 381, 430.) Specifically, defendant must demonstrate that “but for counsel’s errors, he would not have pleaded guilty and would have insisted on going

² The reviewing court must also take into account that “guilty pleas entered as a result of a bargain should not be lightly set aside and . . . the finality of such proceedings should be encouraged.” (*People v. Urfer* (1979) 94 Cal.App.3d 887, 893, fn. 6, citing *Blackledge v. Allison* (1977) 431 U.S. 63 [52 L.Ed.2d 136, 97 S.Ct. 1621].)

to trial.” (*Hill v. Lockhart* (1985) 474 U.S. 52, 59 [88 L.Ed.2d 203, 106 S.Ct. 366].)

Hence, an IAC claim has two components: deficient performance and prejudice.

(*Strickland, supra*, at pp. 687-688, 693-694; *People v. Williams* (1997) 16 Cal.4th 153, 214-215; *People v. Davis* (1995) 10 Cal.4th 463, 503; *People v. Ledesma* (1987) 43 Cal.3d 171, 217.) If defendant fails to establish either component, his claim fails.

Here, defendant claims IAC because his counsel failed to investigate and interview a potential exculpatory witness, even though defendant allegedly provided Attorney Monroe with the name and contact information of the witness. In a declaration submitted for the hearing on the motion to withdraw, however, Attorney Monroe declared that he had “numerous preceding discussions . . . about the nature of the case and charges, the defendant’s constitutional rights, any possible defenses to the alleged charges, [and] discovery issues[.]” Therefore, contrary to defendant’s claims, his counsel did discuss possible defenses and confer with defendant on numerous occasions prior to defendant entering his guilty plea. According to Attorney Monroe, “[a]t no time during the course of representation of [defendant] was counsel informed of a potential exculpatory witness, nor was counsel provided the name, location, or any other contact information for such, from defendant or any other person associated with the case.”

According to Attorney Monroe, on August 29, 2007, five days after entering the guilty plea, defendant telephoned Attorney Monroe and requested to withdraw his plea. At that time, the attorney informed defendant of “pertinent steps defendant would need to

take if he indeed wished to withdraw his plea.” During this conversation, defendant still did not inform the attorney of a possible exculpatory witness.

In his reply brief, defendant asserts that Attorney Monroe’s statement that defendant failed to provide the attorney with names of exculpatory witnesses “is at odds with the declaration filed by [defendant’s] subsequent defense counsel, in which counsel states that ‘[defendant] has given me the name of a percipient witness to some of the facts alleged in the police reports in this case.’” Defendant’s assertion is without merit. There is nothing in the subsequent defense counsel’s statement that contradicts the fact that defendant failed to give *Attorney Monroe* names of possible witnesses. The subsequent counsel’s statement simply shows that defendant provided a name to the new counsel—*not* that such information was provided to Attorney Monroe. Hence, this argument does not assist defendant.

Moreover, the trial court made specific findings as to the adequacy of Attorney Monroe’s representation. The court stated that Attorney Monroe “professionally handled the case” and that defendant “was represented by counsel, and it appears that there was effective assistance of counsel.” Defendant has failed to provide any evidence to the contrary. Therefore, based on the foregoing, we find that the trial court did not abuse its discretion in denying defendant’s motion to withdraw his guilty plea based on IAC.

Assuming *arguendo* that Attorney Monroe rendered IAC, defendant cannot establish prejudice; defendant cannot establish that, but for his trial counsel’s alleged incompetence, he would not have pled guilty and demanded to proceed with trial.

In this case, defendant does not state that, had his counsel interviewed the potential exculpatory witness, he would not have pleaded guilty, taken his chances at trial, and rejected the plea bargain. (Cf. *People v. Johnson* (1995) 36 Cal.App.4th 1351, 1358; *People v. Huynh* (1991) 229 Cal.App.3d 1067, 1083.) In fact, defendant did not provide a declaration in support of his motion to withdraw, and he neither testified nor argued at the hearing on his motion to withdraw the guilty plea that he would not have pleaded guilty but for his counsel's deficient representation. Nevertheless, defendant simply states that the fact he filed this motion to withdraw shows prejudice—" [defendant] demonstrated with certainty that he would not have entered a plea of guilty had previous counsel interviewed his potential exculpatory witness" because he filed a motion to withdraw his plea. Defendant's circular reasoning is without merit. Were we to adopt defendant's position, any defendant filing a motion to withdraw would not need to demonstrate prejudice—prejudice would be presumed simply by the filing of a motion to withdraw. We reject defendant's argument.

2. Lack of Knowledge

In addition to the IAC argument, defendant contends that the trial court abused its discretion in denying his motion to withdraw his guilty plea because "a lack of knowledge overcame [defendant's] exercise of free judgment." (Capitalization omitted.) In support of his argument, defendant relies on *People v. Ramirez* (2006) 141 Cal.App.4th 1501 (*Ramirez*). Defendant's reliance is misplaced.

In *Ramirez*, the appellate court held that a trial court abused its discretion in denying a motion to withdraw a plea where it was discovered, after a plea was entered, that there was a supplemental police report containing information from two other witnesses that a different person had committed the crime charged against the defendant. (*Ramirez, supra*, 141 Cal.App.4th at pp. 1504-1506.) The prosecution in *Ramirez* had ample opportunity to provide the supplemental report to the defendant prior to the admission of defendant's guilty plea; however, the prosecution failed to produce the report or even disclose the information contained in the report to the defendant. (*Id.* at p. 1506.) Therefore, the defendant was able to demonstrate "by clear and convincing evidence that the prosecution's withholding of favorable evidence affected his judgment in entering his plea, rendering the waiver of rights involuntary." (*Id.* at pp. 1507-1508.) The facts in this case are different.

Here, unlike the defendant in *Ramirez*, who had no knowledge of the exculpatory material until after entering his guilty plea, defendant knew of the alleged exculpatory witness *prior to* entering his guilty plea. Moreover, *Ramirez* involved an undisclosed supplemental police report in the possession of the prosecution, which the prosecution failed to provide until after the defendant's guilty plea. (*Ramirez, supra*, 141 Cal.App.4th at p. 1506.) In this case, there was no withholding of information by the prosecution. Instead, defendant knew the name and location of the exculpatory witness before he entered his guilty plea. Furthermore, in *Ramirez*, the defendant was able to show that he pled no contest based on his mistaken belief that no favorable evidence on his behalf

existed, that there were no available defenses, and that he would lose his case and receive a 20-year prison term. (*Id.* at p. 1507.) In this case, defendant was not operating under a mistaken belief because he knew of the existence of the potential exculpatory witness at the time of his plea. Notwithstanding, defendant decided to enter into the plea. Finally, in *Ramirez*, the defendant's trial counsel specifically stated that the supplemental police report would have affected his evaluation of the case and altered his advice to the defendant in accepting the plea agreement. (*Ibid.*) Here, although Attorney Monroe does not indicate whether his advice would have differed if he had knowledge of the potential witness, the attorney did state that defendant exhibited "a full, complete and competent understanding" during the numerous discussions regarding the nature of the charges, possible defenses, discovery issues and the consequences of a guilty plea. Therefore, *Ramirez* does not assist defendant.

In addition, according to the trial court, defendant's witness could not testify to any information which would have assisted defendant. In *People v. Fick* (1980) 107 Cal.App.3d 892, the defendant pled guilty of possession of marijuana for sale. At the sentencing hearing, the defendant moved to withdraw his guilty plea, claiming that he had newly discovered evidence which cast doubt on the truthfulness of the arresting officer's testimony. (*Id.* at p. 896.) The trial court denied the motion and the appellate court affirmed. It held that there was no abuse of discretion because the defendant's motion lacked timeliness and credibility. (*Ibid.*)

In this case, the trial court held an evidentiary hearing to determine the material facts in dispute, which hinged on the credibility of witnesses. (*In re Vargas* (2000) 83 Cal.App.4th 1125, 1132.) Here, at the motion to withdraw, defendant's alleged exculpatory witness, M.B., testified. After her testimony, the trial court held that the witness was biased and her credibility was questionable.

Based on the above, we cannot say that the trial court's denial of defendant's motion to withdraw his guilty plea was arbitrary, capricious or exceeded the bounds of reason. (*People v. Carbajal, supra*, 10 Cal.4th at p. 1121.) We discern no abuse of discretion.

III

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.
/s/ Gaut
J.